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COMMENTS ON HUMAN RIGHTS REPORTS

REPORT

Amnesty International Report 1975-1976

EMBASSY COMMENT

80F178
22/185

p. 84
"It is also impossible to calculate accurately the numbers of those who are killed or who simply disappear as a consequence of extra-legal activities of terrorist death squads. In Argentina, victims of such squads for 1975 numbered 1000."

Probably at least 1000 people died in Argentina in political violence in 1975. It is indeed impossible, however, to accurately calculate responsibility. "Death squads" implies the operations of the security forces; a significant proportion of those killed were killed by the organized leftist terrorist groups, others were killed in direct confrontation with the police or army, and others without question died at the hands of the "death squads." It is inaccurate to assign all 1000 deaths to "death squads," however.

p. 84
"In countries where there was an active and armed opposition, guerrillas form the largest proportion of political prisoners."

ARGENTINA PROJECT (S20000044)

U.S. DEPT. OF STATE, A/RPS/RS

Margaret P. Grafeld, Director

(X) Release () Exclude () Deny

Exemptions(s):

Declassify: () In Part (X) In Full

() Classify as () Extend as () Downgrade to

Date Declassify on Reason

p. 84
"In Latin America, human rights problems do not in most cases arise out of a need for constitutional or legislative reform but out of abuse or disregard for the law."

Since no comprehensive list has been released, the number and status of persons detained under state of siege in Argentina has never been established. Whether or not the majority of detainees can be classified as guerrillas, which is generally understood to include militants responsible for assassinations, bombings, assaults, kidnappings, etc., is unknown. Recent reports indicate that Argentine security forces have become increasingly efficient in killing persons known or suspected of being involved in guerrilla activities in armed confrontations and few prisoners are apparently being taken. It is likely that of those under Executive detention more are persons under investigation for possible subversive connections than actual guerrilla fighters. (A distinction should be made between essentially passive prisoners of conscience--i.e. political prisoners, and militants guilty of criminal acts, even if committed in pursuit of political goals. GOA makes the distinction, claiming there are no political prisoners in Argentina, only "subversive delinquents.")

This assertion is very true in Argentina. It is typical for highly nationalistic military regimes to claim firm allegiance to the system of law, as one of the national institutions they vow to uphold and protect from anarchy when taking power. Military authorities will frequently invoke old laws to justify their actions and, where necessary, take care to prepare new ones to legitimize whatever else they feel needs to be done. GOA leaders insist publicly that they act within

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a legal framework and disapproval of illegal excesses, which, they nevertheless admit are a problem and a concern.

Inaccurate. See Buenos Aires 6818, 1976.

p. 85
"but in January 1976 the Supreme Court declared the state of siege unconstitutional on two grounds: it had not been ratified by Congress and its duration had never been specified."

p. 87
"...the entire judiciary has been suspended."

Members of the Supreme Court were replaced by the Junta with new civilian judges, not an uncommon practice with changes of government. Criminal and civil courts continue to function as in the past (i.e. inefficiently and with large backlogs; however, generally with respect for accepted forms of justice.) Subversive criminal cases have been assigned both to military courts martial and civilian courts as stipulated by law. Judges have exercised a certain independence. For example, a federal judge ruled that the constitutional right to opt to leave the country could not be suspended by the Executive, although this ruling was later overturned by the Supreme Court. In a number of decisions, the courts have emphasized their independent role and their duty to analyze and rule on Executive decrees and measures under state of siege.

The National Security Law 20,840 provides for three to eight years incarceration for "actions which seek to alter or overturn institutional order and social peace." In Latin American parlance, this has a far more serious meaning than the charge of disturbing the public order in the US. It refers to an effort to overthrow the Constitution, government and institutions of Argentina by ideological and/or overt means, and, as such, is the definition of what is seen to be the subversive threat to the country.

p. 87
"...there are severe penalties for crimes such as 'disturbing the public order'."

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p. 87
"Furthermore, the situation of the hundreds of thousands of recognized or de facto refugees has been made extremely precarious."

p. 87
"The government has said that it will not necessarily deport refugees back to their countries of origin."

p. 87
"The new government has indicated that some of the 4,000 already in preventative detention at the time of the coup will be released in the near future. Those who are considered 'subversive' will face court martials."

Some estimates of illegal entrants into Argentina run as high as 500,000. The great majority of these are persons and families from neighboring countries, especially Chile and Paraguay, who have come in hopes of improving their economic opportunities with no regard to political difficulties. Their situation is analogous to the Mexican "wetback" in the US. The GOA has been remarkably tolerant of this influx over the years, and most of these illegal residents cannot rationally be called "refugees." Most could return to their own countries if they wished. The UNHCR has registered with it some 14,000 true refugees, and estimates that there might be another 5000 who could qualify for registration. While the GOA would like to see most of these refugees resettled in other countries, only a portion of the group is in actual danger from political persecution in Argentina. Many or most do suffer economic hardship, but this is not strictly a "human rights" consideration.

GOA officials have repeated this assurance both privately to Embosffs and publicly and it appears that it has for the most part lived up to its promise. However, the UN High Commission for Refugees quietly but officially protested to GOA in the case of one Chilean apparently forcefully returned to Chilean authorities. There is still some question, too, concerning the 40 Uruguayans apparently kidnapped in Buenos Aires who, according to Uruguayan authorities, later turned up arrested in Uruguay.

The Executive power under state of siege is constitutionally limited to arrest and detention of suspects; for trial and sentencing they must be turned over to the civilian or military court system as stipulated by law. Following the outcome of investigations, those detained at the disposition of the Executive are either released or remanded to criminal courts or military courts martial to answer charges pending against them. From March, 1976 to the end of 1976, more than 1,500 persons were reported by the Interior Ministry as having been released from Executive disposition.

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P. 87
"...Señor Enriquez may have been assassinated in Argentina."

It might be noted that Enriquez was a founder and leader of the Chilean MIR, an openly terrorist organization with clandestine, illegal activities extending into Argentina. Enriquez was clearly engaged in activities which placed him outside the law, and associating with known, dangerous terrorists in Argentina who could be expected to resist capture by the authorities. His human rights may have been violated if he was indeed captured and then killed, but he cannot legitimately be considered to have been a refugee; he was a "combatant" in the active service of a terrorist organization.

P. 88
"...alarmed at the manner in which people are arrested by the police and military without a warrant."

State of siege provisions in the Constitution provide for the suspension of constitutional guarantees and permit the Executive power to arrest and hold persons and move prisoners within the country. Apparently arrests under the Executive would not require a warrant. The Constitution does not stipulate a limit on the length of time a person may be held at the convenience of the Executive. (In a recent court case, a federal judge rejected a habeas corpus appeal on the grounds that six months detention at the disposition of the Executive was not "excessive, considering the country's current security situation.")

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Amnesty International "Attack on Academic Freedom in Argentina"
Publication No. 208/76, dated September 6, 1976

P. 3, para. 4

"The Argentine government has been allowing those political prisoners with no charges against them to leave the country once they are granted political asylum by any country."

Although foreigners (including persons who have been charged and others who have no charges against them) have been expelled from Argentina both to their own countries and to other countries for which they had visas, it is not true that Argentine citizens have been "expelled" to willing recipient countries. Argentines in the past were allowed by the Constitution to "opt to leave the country" and some state of siege prisoners did so prior to March 1976 when a Constitutional right of option was suspended by the Junta. The suspension has been upheld by the Supreme Court. However, in late October 1976 the Interior Ministry announced persons detained under state of siege could petition to leave the country. Should the petition be approved, the detainee would require a visa from a recipient country in order to depart Argentina. As the petition program is recent, there is not yet any information on how it will work in practice.

P. 3
Prof. Claudio Santiago Bermann: "...no charges have been presented against him and he is not even at the disposition of the National Government..."

Academics Detained in Argentina

BERMANN, Claudio (Argentine)

GALLIARDO, Juan Carlos (Argentine) (Embassy believes this refers to Juan Carlos Gallardo)

GARIAZZO PIZZARO, Guillermina Alicia (Chilean)

HINRICHSOHN, Alberto (Chilean?)

LETELLIER SOTOMAYOR, Sergio (Chilean)

Foreign Ministry human rights working group reported November 11, 1976 that Prof. Bermann was being held in Cordoba under Executive decree No. 1310, dated 7/15/76 for "communist activities."

(Embassy comment will include whatever new information we have concerning the academics listed in the AI Academic Report.)

Reported above.

Wife told Emboff on Dec. 7, 1976 that Prof. J. C. Gallardo is being detained under Executive decree in Sierra Chica Prison. She visited him there. He has a job offer from a New York university and intends to petition the government to leave Argentina.

ForMin human rights working group reported she has left the country.

Expelled from Argentina by Executive decree.

Expelled from Argentina by Executive decree and left for London Nov. 30, 1976.

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MUÑOZ, Sergio Martin (Chilean?)

Name appeared on December 23 expulsion list. Reportedly has already departed Argentina.

PIZARRO HOFFER, Roberto (Chilean)

Reportedly left the country.

SERRA, Luis Hector (Argentine)

Was on list of Argentines released from Executive disposition by Executive decree 1905, dated 9/3/76.

Students Detained or Missing in Argentina (AI Academic Report)

SERRA, Silvia Ines (Argentine)

Was on list of Argentines released from Executive disposition by decree 586, dated 5/31/76.

International Commission of Jurists Review, December 1976

Embassy finds the ICJ report on military regimes in Latin America factually correct where it pertains to Argentina and an accurate assessment of restrictions on individual liberties.

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